



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/783,647

02/20/2004

George Mulcaire-Jones

50221-00002

7353

25231

7590

03/31/2008

MARSH, FISCHMANN & BREYFOGLE LLP  
3151 SOUTH VAUGHN WAY  
SUITE 411  
AURORA, CO 80014

EXAMINER

HOEKSTRA, JEFFREY GERBEN

ART UNIT

PAPER NUMBER

3736

MAIL DATE

DELIVERY MODE

03/31/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<b>Application No.</b> 10/783,647	<b>Applicant(s)</b> MULCAIRE-JONES, GEORGE	
	<b>Examiner</b> JEFFREY G. HOEKSTRA	<b>Art Unit</b> 3736	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 04 March 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: 13-32.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
 13. ☐ Other: \_\_\_\_\_.

/Max Hindenburg/  
Supervisory Patent Examiner, Art Unit 3736

/Jeffrey G Hoekstra/  
Examiner, Art Unit 3736

Continuation of 3. NOTE:

The proposed amendments to independent claim 27 positively recite additional limitations not previously expressly considered in a patentability determination and comprising a new scope of invention for claims 27-29 and 31, wherein the additional limitations include at least "a tri-color bead having three holes formed therethrough", and wherein the proposed amendments raise new issues requiring further search and/or consideration in a patentability determination .

Continuation of 11. does NOT place the application in condition for allowance because:

In response to Applicant's request for reconsideration with regards to the Final Rejection of claims 13-26 mailed 01/04/2008, the Examiner notes Applicant argues the anticipatory rejection of the claims under Jennings and reiterates the following:

Specifically Applicant argues Jennings does not disclose, teach, and/or fairly suggest (a) the positively recited differently appearing types or number of beads as recited in independent claims 13 and 21, (b) the "ovulation prediction kit for determining the day during a fertile phase of the woman's menstrual cycle when a level of luteinizing hormone released by the woman's pituitary gland surges and a ninth type of bead positioned on the string to indicate the day when the luteinizing hormone level surges based on a result from the ovulation prediction kit and removed from the string at the end of the woman's menstrual cycle" of claim 21, or (c) the removable beads of claims 13 and 27.

With regards to Applicant's argument (a) that Jennings does not disclose the positively recited differently appearing types or number of beads as recited in independent claims 13 and 21 including up to nine types of beads that are different in appearance from one another in at least one of color, shape, or size, the Examiner reiterates that Jennings discloses "...beads ... may be consecutively numbered from one through thirty-two" (column 7 lines 52-55) and "...if the preferred shapes of beads are not locally available, other shapes can be used without departing from the present invention..." (column 8 lines 7). Thus Jennings discloses up to 32 differently appearing types of beads that are different in appearance from one another in both shape and color.

With regards to Applicant's argument (b) that Jennings does not disclose the "ovulation prediction kit for determining the day during a fertile phase of the woman's menstrual cycle when a level of luteinizing hormone released by the woman's pituitary gland surges and a ninth type of bead positioned on the string to indicate the day when the luteinizing hormone level surges based on a result from the ovulation prediction kit and removed from the string at the end of the woman's menstrual cycle" of claim 21, the Examiner reiterates that as broadly as structurally claimed Jennings discloses "an ovulation prediction kit" (column 1 line 39 - column 2 line 9) that is capable of providing results indicative of luteinizing hormone levels and is capable of associated with any one of the plurality of beads and/or bead types. The Examiner notes the structure as disclosed by Jennings is capable of the positively recited functions and/or intended use of the "ovulation prediction kit" as broadly as structurally claimed.

With regards to Applicant's argument (c) that Jennings does not disclose the removable beads of claims 13 and 27, the Examiner notes Jennings discloses that the plurality of "...beads...are strung on a strong, durable, cord or wire that can be securely tied" such that as broadly as structurally claimed the beads are capable of the function and/or intended use of being removed from the string, cord, or wire (e.g. the string, cord, or wire is capable of being untied).